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Chapter No. 431
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HOUSE BILL NO. 1147

Originated in House Don Richardson Clerk

HOUSE BILL NO. 1147

AN ACT TO AMEND SECTION 75-76-33, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT ALL REGULATIONS ADOPTED BY THE MISSISSIPPI GAMING COMMISSION SHALL BE ADOPTED IN ACCORDANCE WITH THE MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW; TO AUTHORIZE THE COMMISSION TO PRESCRIBE THE AMOUNT OF, AND TO COLLECT, CERTAIN LIMITED FEES IMPOSED BY REGULATIONS OF THE COMMISSION; TO REQUIRE THE COMMISSION TO ADOPT REGULATIONS SETTING THOSE FEES AT LEVELS THAT WILL PROVIDE THE COMMISSION WITH SUFFICIENT REVENUE, WHEN COMBINED WITH CERTAIN OTHER MONIES, TO CARRY OUT THE PROVISIONS OF THE MISSISSIPPI GAMING CONTROL ACT WITHOUT ANY STATE GENERAL FUNDS; TO AMEND SECTION 75-76-81, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE COMMISSION SHALL ASSESS AND COLLECT THOSE FEES AUTHORIZED BY REGULATIONS OF THE COMMISSION AND THAT THE FEES SHALL BE DEPOSITED INTO A SPECIAL FUND CREATED IN THE STATE TREASURY TO BE DESIGNATED AS THE "MISSISSIPPI GAMING COMMISSION FUND"; TO PROVIDE THAT MONIES IN THE SPECIAL FUND MAY BE USED BY THE COMMISSION TO CARRY OUT THE PURPOSES OF THE MISSISSIPPI GAMING CONTROL ACT; TO RATIFY, APPROVE AND CONFIRM THE IMPOSITION AND COLLECTION OF ANY FEES BY THE MISSISSIPPI GAMING COMMISSION UNDER THE MISSISSIPPI GAMING CONTROL ACT, THE DEPOSIT OF FUNDS RECEIVED FROM THOSE FEES INTO ANY FUND IN THE STATE TREASURY AND THE EXPENDITURE OF THE FUNDS BEFORE THE EFFECTIVE DATE OF THIS ACT, AS BEING THE PROPER METHOD OF IMPOSITION, COLLECTION, DEPOSIT AND EXPENDITURE BEFORE THE EFFECTIVE DATE OF THIS ACT; TO AMEND SECTIONS 75-76-9 AND 75-76-15, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE EXECUTIVE DIRECTOR AND MEMBERS OF THE COMMISSION MAY NOT RECEIVE ANYTHING OF VALUE FROM ANY PERSON HOLDING OR APPLYING FOR A GAMING LICENSE; TO AMEND SECTION 75-76-79, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PERSON ISSUED A MANUFACTURER'S LICENSE UNDER THE MISSISSIPPI GAMING CONTROL ACT MAY NOT BE DIRECTLY REIMBURSED BY A HOLDER OF A GAMING LICENSE FOR THE COST OF ANY FEE PAID BY THE PERSON FOR THE ISSUANCE OR CONTINUATION OF SUCH A LICENSE; TO AMEND SECTION 75-76-34, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT SCHOOLS AND TRAINING INSTITUTIONS THAT ARE REGULATED BY THE COMMISSION TO TEACH OR TRAIN GAMING EMPLOYEES MAY ACCEPT STUDENTS WHO ARE NOT RESIDENTS OF THE STATE OF MISSISSIPPI; TO AMEND SECTION 75-76-157, MISSISSIPPI CODE OF 1972, TO CLARIFY THE AUTHORITY OF THE GAMING COMMISSION REGARDING THE PROMOTIONAL ACTIVITIES OF LICENSEES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 75-76-33, Mississippi Code of 1972, is amended as follows:

75-76-33. (1) The commission shall, from time to time, adopt, amend or repeal such regulations, consistent with the policy, objects and purposes of this chapter, as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this chapter. The commission shall comply with the Mississippi Administrative Procedures Law when adopting, amending or repealing any regulations authorized under this section or under any other provision of this chapter.

(2) These regulations shall, without limiting the general powers herein conferred, include the following:

(a) Prescribing the method and form of application which any applicant for a license or for a manufacturer's, seller's or distributor's license must follow and complete before consideration of his application by the executive director or the commission.

(b) Prescribing the information to be furnished by any applicant or licensee concerning his antecedents, habits, character, associates, criminal record, business activities and financial affairs, past or present.

(c) Prescribing the information to be furnished by a licensee relating to his employees.

(d) Requiring fingerprinting of an applicant or licensee, and gaming employees of a licensee, or other methods of identification and the forwarding of all fingerprints taken pursuant to regulation of the Federal Bureau of Investigation.

(e) Prescribing the manner and procedure of all hearings conducted by the commission or any hearing examiner of the commission, including special rules of evidence applicable thereto and notices thereof.

(f) Requiring any applicant to pay all or any part of the fees and costs of investigation of such applicant as may be determined by the commission under paragraph (g) of this subsection (2).

(g) Prescribing the amounts of investigative fees only as authorized by regulations of the commission under paragraph (f) of this subsection, and collecting those fees. The commission shall adopt regulations setting the amounts of those fees at levels that will provide the commission with sufficient revenue, when combined with any other monies as may be deposited into the Mississippi Gaming Commission Fund created in Section 3 of this act, to carry out the provisions of this chapter without any state general funds. In calculating the amount of such fees, the commission shall:

(i) Attempt to set the fees at levels that will create a balance in the Mississippi Gaming Commission Fund that does not exceed, at the end of any state fiscal year, two percent (2%) of the projected amount of funds that will provide the commission with such sufficient revenue; and

(ii) Demonstrate the reasonableness of the relationship between a fee and the actual costs of the investigative activity for which the fee is being prescribed.

(h) Prescribing the manner and method of collection and payment of fees and issuance of licenses.

(i) Prescribing under what conditions a licensee may be deemed subject to revocation or suspension of his license.

(j) Requiring any applicant or licensee to waive any privilege with respect to any testimony at any hearing or meeting of the commission, except any privilege afforded by the Constitution of the United States or this state.

(k) Defining and limiting the area, games and devices permitted, and the method of operation of such games and devices, for the purposes of this chapter.

(l) Prescribing under what conditions the nonpayment of a gambling debt by a licensee shall be deemed grounds for revocation or suspension of his license.

(m) Governing the use and approval of gambling devices and equipment.

(n) Prescribing the qualifications of, and the conditions under which, attorneys, accountants and others are permitted to practice before the commission.

(o) Restricting access to confidential information obtained under this chapter and ensuring that the confidentiality of such information is maintained and protected.

(p) Prescribing the manner and procedure by which the executive director on behalf of the commission shall notify a county or a municipality wherein an applicant for a license desires to locate.

(q) Prescribing the manner and procedure for an objection to be filed with the commission and the executive director by a county or municipality wherein an applicant for a license desires to locate.

(3) Notwithstanding any other provision of law, each licensee shall be required to comply with the following regulations:

(a) No wagering shall be allowed on the outcome of any athletic event, nor on any matter to be determined during an athletic event, nor on the outcome of any event, which does not take place on the premises.

(b) No wager may be placed by, or on behalf of, any individual or entity or group, not present on a licensed vessel or cruise vessel.

SECTION 2. Section 75-76-81, Mississippi Code of 1972, is amended as follows:

75-76-81. Except as otherwise provided in this section, the Chairman of the State Tax Commission shall assess and collect all taxes, fees, licenses, interest, penalties, damages and fines imposed by this chapter, and is hereby empowered to promulgate rules and regulations to administer such collections. Any records

or other documents submitted by the licensee, or on his behalf, to the Mississippi Gaming Commission or executive director shall be made available to the Chairman of the State Tax Commission or his authorized agent upon written request.

The gross revenue fees levied by this chapter shall be due and payable on or before the twentieth day of the month next succeeding the month in which the fees accrue except as otherwise provided. The licensee shall make a return showing the gross revenue and compute the fee due for the period.

Except for fees imposed under Section 75-76-33(2)(f), all administrative provisions of the sales tax law, and amendments thereto, including those which provide for collection and administrative appeals procedures, fix damages, penalties and interest for failure to comply with the provisions of said sales tax law, and all other requirements and duties imposed upon any licensee or taxpayer, shall apply to all persons liable for taxes, fees and all other monies imposed under the provisions of this chapter. However, fines or other assessments levied by the Mississippi Gaming Commission or the executive director will not be considered due and payable until thirty (30) days after final determination of such fines or assessments. The Chairman of the State Tax Commission shall exercise all power and authority and perform all duties with respect to licensees or taxpayers under this chapter as are provided in said sales tax law, except where there is conflict, then the provisions of this chapter shall control.

The Mississippi Gaming Commission shall assess and collect all fees imposed under Section 75-76-33(2)(f) and shall deposit the funds received from the fees into the Mississippi Gaming Commission Fund created in Section 3 of this act.

The determination and/or assessment of any taxes, fees, licenses, interest, penalties, damages and fines under this chapter by the Chairman of the State Tax Commission, the Executive

Director of the Mississippi Gaming Commission or the Mississippi Gaming Commission shall be prima facie correct.

SECTION 3. (1) There is created in the State Treasury a special fund to be designated as the "Mississippi Gaming Commission Fund." The special fund shall consist of monies deposited therein under Section 75-76-81 and monies from any other source designated for deposit into the fund. Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund.

(2) Monies in the special fund may be used by the commission, upon appropriation by the Legislature, only for the purposes of carrying out the provisions of this chapter. Unexpended amounts remaining in the special fund at the end of a fiscal year shall be used by the commission in calculating the amounts of fees to be imposed under Section 75-76-33(2)(f) during the next succeeding state fiscal year that will be necessary to provide the commission with sufficient revenue, when combined with other monies deposited into the special fund, to carry out the provisions of this chapter without any state general funds.

SECTION 4. The imposition and collection of any fees by the Mississippi Gaming Commission under Section 75-76-1 et seq. before the effective date of this act, the deposit of funds received from those fees into any fund in the State Treasury before the effective date of this act, and the expenditure of such funds before the effective date of this act are hereby ratified, approved and confirmed as being the proper method of imposition, collection, deposit and expenditure before the effective date of this act.

SECTION 5. Section 75-76-9, Mississippi Code of 1972, is amended as follows:

75-76-9. (1) This section shall take effect from and after October 1, 1993.

(2) Initial appointments to the commission made pursuant to this chapter shall be for terms as follows:

- (a) One (1) member for two (2) years;
- (b) One (1) member for three (3) years; and
- (c) One (1) member for four (4) years.

(3) The term of each of the members first appointed pursuant to this chapter shall be designated by the Governor.

(4) After the initial appointments, all members shall be appointed for terms of four (4) years from the expiration date of the previous term; provided, however, that no member shall serve more than two (2) terms of four (4) years each.

(5) Appointments to the commission and designation of the chairman shall be made by the Governor with the advice and consent of the Senate. Prior to the nomination, the PEER Committee shall conduct an inquiry into the nominee's background, with particular regard to the nominee's financial stability, integrity and responsibility and his reputation for good character, honesty and integrity.

(6) The member designated by the Governor to serve as chairman shall serve in such capacity throughout such member's entire term and until his successor shall have been duly appointed and qualified. No such member, however, shall serve in such capacity for more than ten (10) years.

(7) Appointments to fill vacancies on the commission shall be for the unexpired term of the member to be replaced.

(8) Members of the commission shall not have any direct or indirect interest in an undertaking that puts their personal interest in conflict with that of the commission and shall be governed by the provisions of Section 109 of the Mississippi Constitution and Section 25-4-105. In addition, members of the commission shall not receive anything of value from, or on behalf

of, any person holding or applying for a gaming license under this chapter.

(9) Each member of the commission shall serve for the duration of his term and until his successor shall be duly appointed and qualified; provided, however, that in the event that a successor is not duly appointed and qualified within one hundred twenty (120) days after the expiration of the member's term, a vacancy shall be deemed to exist.

(10) Each member of the commission is entitled to per diem as provided by Section 25-3-69.

SECTION 6. Section 75-76-15, Mississippi Code of 1972, is amended as follows:

75-76-15. (1) [Repealed]

(2) From and after October 1, 1993, the position of Executive Director of the Mississippi Gaming Commission is hereby created.

(3) The Gaming Commission shall appoint the executive director, with the advice and consent of the Senate, and the executive director shall serve at the will and pleasure of the commission. The director appointed by the State Tax Commission pursuant to subsection (1) of this section who is serving on September 30, 1993, shall serve as the Executive Director of the Mississippi Gaming Commission until the executive director appointed by the Gaming Commission pursuant to this section is confirmed by the Senate.

(4) No member of the Legislature, no person holding any elective office, nor any officer or official of any political party is eligible for the appointment of executive director.

(5) The executive director must have at least five (5) years of responsible administrative experience in public or business administration or possess broad management skills.

(6) The executive director shall devote his entire time and attention to his duties under this chapter and the business of the

commission and shall not pursue any other business or occupation or hold any other office of profit.

(7) The executive director shall not be pecuniarily interested in any business or organization holding a gaming license under this chapter or doing business with any person or organization licensed under this chapter and shall be governed by the provisions of Section 25-4-105. In addition, the executive director shall not receive anything of value from, or on behalf of, any person holding or applying for a gaming license under this chapter.

(8) The executive director is entitled to an annual salary in the amount specified by the commission, subject to the approval of the State Personnel Board, within the limits of legislative appropriations or authorizations.

SECTION 7. Section 75-76-79, Mississippi Code of 1972, is amended as follows:

75-76-79. (1) (a) Except as otherwise provided in paragraphs (b) and (c) of this subsection, it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, to operate, carry on, conduct or maintain any form of manufacture, selling or distribution of any gaming device for use or play in Mississippi or for distribution outside of Mississippi without first procuring and maintaining all required federal and state licenses.

(b) A lessor who specifically acquires equipment for a capital lease is not required to be licensed under this section.

(c) The holder of a state gaming license or the holding company of a corporate licensee may, within two (2) years after cessation of business or upon specific approval by the executive director, dispose of by sale in a manner approved by the executive director, any or all of its gaming devices, including slot machines, without a distributor's license. In cases of bankruptcy of a state gaming licensee or foreclosure of a lien by a bank or

other person holding a security interest for which gaming devices are security in whole or in part for the lien, the executive director may authorize the disposition of the gaming devices without requiring a distributor's license.

(d) Any person whom the commission determines is a suitable person to receive a license under the provisions of this section may be issued a manufacturer's or distributor's license. The burden of proving his qualification to receive or hold a license under this section is at all times on the applicant or licensee.

(e) Every person who must be licensed pursuant to this section is subject to the provisions of Sections 75-76-199 through 75-76-265, unless exempted from those provisions by the commission.

(f) The commission may exempt, for any purpose, a manufacturer, seller or distributor from the provisions of Sections 75-76-199 through 75-76-265, if the commission determines that the exemption is consistent with the purposes of this chapter.

(g) As used in this section, "holding company" has the meaning ascribed to it in Section 75-76-199.

(2) If the commission determines that a manufacturer or distributor is unsuitable to receive or hold a license:

(a) No new gaming device or associated equipment manufactured by the manufacturer or distributed by the distributor may be approved;

(b) Any previously approved device or associated equipment manufactured by the manufacturer or distributed by the distributor is subject to revocation of approval if the reasons for the denial of the license also apply to that device or associated equipment;

(c) No new device or associated equipment manufactured by the manufacturer or distributed by the distributor may be sold, transferred or offered for use or play in Mississippi; and

(d) Any association or agreement between the manufacturer or distributor and a licensee must be terminated, unless otherwise provided by the commission. An agreement between such a manufacturer or distributor of gaming devices or associated equipment and a licensee shall be deemed to include a provision for its termination without liability on the part of the licensee upon a finding by the commission that the manufacturer is unsuitable to be associated with a gaming enterprise. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

(3) Failure of a licensee to terminate any association or agreement with a manufacturer or distributor of gaming devices or associated equipment after receiving notice of a determination of unsuitability, the denial of a license or failure to file a timely application for a license, is an unsuitable method of operation.

(4) There is hereby imposed and levied on each applicant for a manufacturer's, seller's or distributor's license under this section an annual license fee in the following amount:

(a) For the issuance or continuation of a manufacturer's license, One Thousand Dollars (\$1,000.00).

(b) For the issuance or continuation of a seller's or distributor's license, Five Hundred Dollars (\$500.00).

This fee is to be paid by the applicant to the State Tax Commission on or before the filing of the application for a manufacturer's, seller's or distributor's license by the applicant. Upon such payment the Chairman of the State Tax Commission shall certify to the executive director that such fee has been paid by the applicant.

Except for those amounts that a person issued a manufacturer's license under this section may charge for goods supplied or services rendered, the person holding the manufacturer's license may not be directly reimbursed by a holder of a gaming license for the cost of any fee paid by the person for the issuance or continuation of such a license, whether imposed under this section or any other provision of this chapter.

(5) A manufacturer or distributor of associated equipment who sells, transfers or offers the associated equipment for use or play in Mississippi may be required by the executive director to file an application for a finding of suitability to be a manufacturer or distributor of associated equipment.

Any person who directly or indirectly involves himself in the sale, transfer or offering for use or play in Mississippi of associated equipment who is not otherwise required to be licensed as a manufacturer or distributor may be required by the executive director to file an application for a finding of suitability to be a manufacturer or distributor of associated equipment.

If an application for a finding of suitability is not submitted within thirty (30) days after demand by the executive director, he may pursue any remedy or combination of remedies provided in this chapter.

(6) The executive director and his employees may inspect every gaming device which is manufactured, sold or distributed:

(a) For use in this state, before the gaming device is put into play.

(b) In this state for use outside this state, before the gaming device is shipped out of this state.

The executive director may inspect every gaming device which is offered for play within this state by a licensee.

The executive director may inspect all associated equipment which is manufactured, sold or distributed for use in this state before the equipment is installed or used by a gaming licensee.

In addition to all other fees and charges imposed by this chapter, the executive director may determine an inspection fee with regard to each manufacturer, seller or distributor which must not exceed the actual cost of inspection and investigation. Upon such determination, the executive director shall certify to the Chairman of the State Tax Commission the amount of the inspection fee and the name and address of the applicant. Upon such certification the State Tax Commission shall proceed to assess and collect such inspection fee from the applicant.

SECTION 8. Section 75-76-34, Mississippi Code of 1972, is amended as follows:

75-76-34. (1) The Mississippi Gaming Commission is authorized to regulate all schools or training institutions that teach or train gaming employees. Such schools shall only be located in counties where gaming is legal aboard a cruise vessel or vessel or in counties where cruise vessels were legally operating out of a port at the time of passage of the Mississippi Gaming Control Act pursuant to Section 19-3-79. No such school shall be located on publicly owned property, and no public school shall teach or train persons to be gaming employees. The gaming activities of schools or training institutions regulated by the commission shall be deemed to be legal under the laws of the State of Mississippi. Any person desiring to operate a school or training institution must file a license application with the executive director to be licensed by the commission.

(2) The commission may adopt regulations it deems necessary to regulate schools and training institutions. These regulations shall, without limiting the general powers of the commission, include the following:

(a) Prescribing the method and form of application which any applicant for a school or training institution must follow and complete before consideration of his application by the executive director or commission.

(b) Prescribing the information to be furnished by the applicant relating to his employees.

(c) Requiring fingerprinting of the applicant, employees and students of the school or institution or other methods of identification and the forwarding of all fingerprints taken pursuant to regulation of the Federal Bureau of Investigation.

(d) Requiring any applicant to pay all or part of the fees and costs of investigation of the applicant as may be determined by the commission.

(e) Prescribing the manner and method of collection and payment of fees and costs and issuance of licenses to schools or training institutions.

(f) Prescribing under what conditions a licensee authorized by this section may be deemed subject to revocation or suspension of his license.

(g) Defining the curriculum of the school or training institution, the games and devices permitted, the use of tokens only for instruction purposes, and the method of operation of games and devices.

(h) Requiring the applicant to submit its location of the school or training institution, which shall be at least four hundred (400) feet from any church, school, kindergarten or funeral home. However, within an area zoned commercial or business, the minimum distance shall not be less than one hundred (100) feet.

(i) Requiring that all employees and students of the school or training institution be at least twenty-one (21) years of age * * *.

(j) Requiring all employees and students of the school or training institution to wear identification cards issued by the commission while on the premises of the school or training institution.

(k) Requiring the commission to investigate each applicant, employee and student and determine that the individual does not fall within any one (1) of the following categories:

(i) Is under indictment for, or has been convicted in any court of, a felony;

(ii) Is a fugitive from justice;

(iii) Is an unlawful user of any controlled substance, is addicted to any controlled substance or alcoholic beverage, or is an habitual drunkard;

(iv) Is a mental defective, has been committed to a mental institution, or has been voluntarily committed to a mental institution on more than one (1) occasion;

(v) Has been discharged from the Armed Forces under dishonorable conditions; or

(vi) Has been found at any time by the executive director or commission to have falsified any information.

SECTION 9. Section 75-76-157, Mississippi Code of 1972, is amended as follows:

75-76-157. (1) Except as provided in Sections 75-76-159 through 75-76-165, inclusive, gaming debts not evidenced by a credit instrument are void and unenforceable and do not give rise to any administrative or civil cause of action.

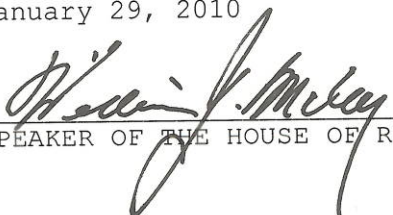
(2) A claim by a patron of a licensee for payment of a gaming debt not evidenced by a credit instrument, and a dispute between a licensee and a patron associated with a promotional activity as defined in Section 75-76-5(mm), shall be resolved by the executive director in accordance with Sections 75-76-159 through 75-76-165, inclusive. The resolution of such a claim or dispute by the executive director shall include any claims for alleged winnings or losses, or the award or distribution of cash, prizes, benefits, tickets or any other item of value associated with the promotional activity, or the manner in which the specific event at which the award or distribution from the promotional

activity is conducted; however, the authority granted under this subsection (2) regarding a promotional activity does not provide the executive director or the commission with any additional authority, not otherwise granted by law, to regulate the promotional activity with regard to those matters pertaining exclusively to the operational or administrative aspects of the promotional activity that occur in advance of such specific event at which the award or distribution is conducted.

SECTION 10. Sections 3 and 4 of this act shall be codified as separate sections in Chapter 76, Title 75, Mississippi Code of 1972.

SECTION 11. This act shall take effect and be in force from and after its passage.

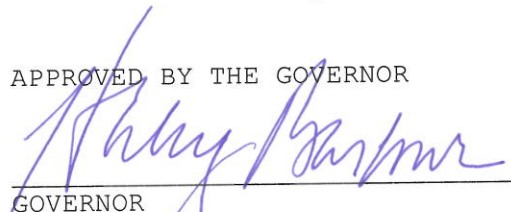
PASSED BY THE HOUSE OF REPRESENTATIVES
January 29, 2010


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 9, 2010


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

3/24/10

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